

In the Matter of the Request for a Hearing on)	OAH No. 2007080302
Citations and Desist and Refrain Order issued by)	
the California Corporations Commissioner,)	File No.: 100-3221
)	
Complainant,)	Statement in Support of Citations and
)	Desist and Refrain Order
v.)	
)	
MTS Financial Services, Inc. doing business as)	
Paycheck Xpre\$\$,)	
)	
Respondent.)	

Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

On June 28, 2006, the Commissioner of the California Department of Corporations (“Department”) issued Respondent, MTS Financial Services, Inc., which also does business as Paycheck Xpre\$\$, a deferred deposit transaction originator license (File No. 100-3221) pursuant to the California Deferred Deposit Transaction Law (“CDDTL”). The CDDTL is found in California Financial Code sections 23000 et seq. (Future section references are to the Financial Code unless indicated otherwise.)

Statement in Support of Citations
and Desist and Refrain Order

1 The Commissioner is responsible for enforcing all provisions of the CDDTL. On July 12,
2 2007, the Commissioner pursuant to section 23050 and 23058 issued Citations and a Desist and
3 Refrain Order to Respondent for violations of the legal standards required of all deferred deposit
4 transaction originators. Respondent timely requested a hearing concerning the Department's action.

5 **I**

6 **FACTS AND PROCEDUAL BACKGROUND**

7 1. Respondent MTS Financial Services, Inc. is a California corporation and also did
8 business under the name "Paycheck Xpre\$\$" without having filed a fictitious business name
9 statement to do so. The owner and corporate secretary for MTS Financial Services, Inc. is Jody C.
10 Schnabl ("Schnabl"). Schnabl filed Respondent's CDDTL application and is designated as the
11 person in charge of Respondent's place of business. Respondent's president/chief executive
12 officer is Eric Steele Majors and its treasurer/chief financial officer is Dwayne Anthony Taylor.

13 2. Respondent engaged in CDDTL business at 2263 Fairview Road, Ste. D, Costa Mesa,
14 California, after the Commissioner issued it a license pursuant to section 23005, subdivision (a).

15 3. Since at least July 2006 Respondent engaged in the business of deferred deposit
16 transactions by offering, originating and making deferred deposit transactions as described below.

17 4. A deferred deposit transaction is a written transaction whereby one person gives funds
18 to another person upon receipt of a personal check and it is agreed that the personal check shall
19 not be deposited until a later date. These transactions are sometimes referred to as "payday
20 advances" or "payday loans."

21 5. Respondent filed with the Department an application (File No. 100-3221) for a license to
22 make deferred deposit transactions on May 30, 2006, which includes a Declaration, designated as
23 "Exhibit K" that Schnabl signed under penalty of perjury for Respondents, which states:

24 **I (we) have obtained and read copies of the California Deferred Deposit**
25 **Transaction Law (Division 10 of the California Financial Code) and the Rules**
26 **(Chapter 3, Title, 10, California Code of Regulations) and am familiar with**
their content: and,

27 **I (we) agree to comply with all the provision[s] of the California Deferred**
28 **Deposit Transaction Law, including any rules or orders of the Commissioner**
of Corporations.

Respondent's Declaration to the application also states that "by signing this declaration" "the applicant hereby agrees (or attests) or declares understanding of the following items listed below:"

1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's file records.
3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, at minimum, a ledger or listing of the following current and undated information for each deferred deposit transaction (as specified in Financial Code section 23035): customer's name and address, account number, check number, amount provided, fee, amount of check, corresponding annual percentage rate (e.g. 14-day or 30-day) and the deferred due date.
4. That the applicant will maintain a file of all advertising for a period of 90 days from the date of its use, which will be available to the Commissioner of Corporations upon request.
5. That the applicant will file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause of denial of a license.

6. On April 5, 2006, Respondent completed another Declaration designated as "Exhibit L" to the application, which Schnabl signed under penalty of perjury stating:

1. The applicant will comply with all federal and state laws and regulations (including Division 10, commencing with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction (Financial Code Section 23037(i).)

[T]here are certain obligations and responsibilities that a licensee must comply with. The following information about a licensee's obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law is provided for your reference . . . a licensee should review and become familiar with all provisions of the law and rules and regulations. . . .

5. A licensee is subject to statutory books and records requirements . . . (Section 23024.)

8. Notwithstanding knowledge regarding the CDDTL requirements, Respondent willfully and knowingly engaged in CDDTL violations. The Department examiner's review of Respondent's business revealed multiple violations of the CDDTL warranting the issuance of Citations and a Desist and Refrain Order to it. The Commissioner seeks to have his actions upheld.

II DEFERRED DEPOSIT TRANSACTION LAW

9. As a licensee, Respondent is required to comply with basic legal requirements imposed on all CDDTL licensees concerning notices and advertisements.

10. Section 23007 requires a licensee to maintain a minimum net worth of \$25,000 and, in relevant part, states:

The applicant shall file with the application financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000).

11. Section 23023 states:

No licensee shall transact the business licensed or make any transaction provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business.

12. Section 23027 describes the advertising requirements for CDDTL licensees and subdivision (b) states:

(b) No licensee shall place an advertisement disseminated primarily in this state for a deferred deposit transaction unless the licensee discloses in the printed text of the advertisement, or the oral text in the case of a radio or television advertisement, that the licensee is licensed by the department pursuant to this division.

13. Section 23035, subdivision (c) states:

(c) Before entering into a deferred deposit transaction, licensees shall distribute to customers a notice that shall include, but not be limited to, the following:

- (1) Information about charges for deferred deposit transactions.
- (2) That if the customer's check is returned unpaid, the customer may be charged an additional fee of up to fifteen dollars (\$15).
- (3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.
- (4) The department's toll-free telephone number for receiving calls regarding customer complaints and concerns.
- (5) That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.
- (6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.

14. Section 23035 subdivision (e) states:

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

- (1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations.
- (2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.
- (3) The name, address, and telephone number of the licensee.
- (4) The customer's name and address.
- (5) The date to which deposit of check has been deferred (due date).

(6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.

(7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect.

(10) That the licensee cannot accept collateral in connection with the transaction.

(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(12) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

(13) Any other information that the commissioner shall deem necessary by regulation.

III

DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

15. On June 11, 2007, the Commissioner's examiner visited Respondent's business after giving the licensee advance notice of the Department's regulatory examination.

16. The Commissioner's examiner found Respondent violated section 23007 and that and that Respondent's net worth was below the required \$25,000 statutory minimum.

17. Respondent also used the business name "Paycheck Xpre\$\$" in its agreements that Respondent was not authorized to use and which constituted a violation of section 23023.

18. Commissioner's examiner found Respondent violated section 23027, subdivision (b), because its advertisements failed to disclose the Department had issued it a CDDTL license.

19. The Commissioner's examiner found Respondent failed to distribute a written notice to consumers before entering into deferred deposit transactions with consumers, which violates section 23035, subdivisions (c) and (e)

21. Lastly, Respondent's written agreements with consumers did not contain the required disclosures, which violates section 23035, subdivision (e).

22. The Respondent was informed about the above-described violations at the time of the Department's regulatory examination.

23. On July 12, 2007, the Commissioner issued to Respondent “Citations and Desist and Refrain Order” citing it for eight violations of the CDDTL. The Citations are set forth below:

Citation A. Licensee failed to include disclosure that the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction and cannot be threatened with criminal prosecution in the notice distributed to the customer prior to entering into the agreement in violation of Financial Code section 23035 (c) (3).

Citation B. Licensee failed to include the Department’s toll free number, which is 1-(866) Ask Corp (275-2677), in the notice distributed to the customer prior to entering into the agreement in violation of Financial Code section 23035 (c) (4).

Citation C. Licensee failed to include disclosure that the check is being negotiated as part of a deferred deposit transaction pursuant to section 23035 of the Financial Code and is not subject to the provisions of 1719 of the Civil Code and that no customer shall be required to pay treble damages if the check does not clear in the notice distributed to the customer prior to entering into the agreement in violation of Financial Code section 23035 (c) (6).

Citation D. Licensee failed to include disclosure that the customer cannot be prosecuted or threatened with prosecution to collect a deferred deposit transaction in the Agreement in violation of California Financial Code section 23035 (e) (9).

Citation E. Licensee failed to include disclosure that the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service in the Agreement in violation of California Financial Code section 23035 (e) (11).

Citation F. Licensee failed to include disclosure in advertising that the licensee is licensed by the Department of Corporations pursuant to the California Deferred Deposit Transaction Law.

Citation G. Licensee failed to maintain a net worth of \$25,000 as of March 31, 2007 in violation of Financial Code section 23007.

Citation H. Licensee failed to conduct deferred deposit transaction business under the name in the license in violation of Financial Code section 23023. Licensee conducted business under the name “Paycheck Xpre\$\$”. Licensee is authorized in the license to conduct deferred deposit business under the name “MTS Financial Services, Inc.”.

Pursuant to section 23058, Respondent was ordered to pay to the Commissioner a total penalty of \$15,000. The penalty for each of citation is shown below.

Citation A. \$1,500

Citation B. \$1,500

Citation C. \$1,500

Citation D. \$1,500

Citation E. \$1,500

Citation F. \$2,500

Citation G. \$2,500

Citation H. \$1,500

IV

COMMISSISONER'S AUTHORITY TO ISSUE CITATIONS

Section 23058 gives the Commissioner's authority to issues citations and states:

(a) If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$ 2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a

judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

V

COMMISSISONER’S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER

Respondent engaged in the business of deferred deposit transactions that violated the above provisions of the CDDTL.

California Financial Code section 23050 provides in pertinent part:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division.

Pursuant to section 23050, the Commissioner ordered Respondents to desist and refrain from engaging in the business of deferred deposit transactions in the State of California in violation of California Financial Code sections 23007; 23023; 23027, subdivision (b); 23035, subdivisions (c) and (e). The Commissioner’s Desist and Refrain Order was properly issued and necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL.

CONCLUSION

Complainant finds by reason of the foregoing that Respondent MTS Financial Services who does business as Paycheck Xpre\$\$ violated sections 23007; 23023; 23027, subdivision (b); 23035, subdivisions (c) and (e). Therefore, the Commissioner is justified in issuing Citations to Respondent pursuant to section 23058 and is also justified in issuing a Desist and Refrain Order to Respondent pursuant to section 23050.

THEREFORE IT IS PRAYED THAT:

1. Respondent be ordered to immediately pay to the Commissioner an administrative penalty in the total amount of fifteen thousand dollars (\$15,000) for Citations A through H described above; and,

1 2. The Desist and Refrain Order issued pursuant to Financial Code section
2 23050 be upheld to prohibit Respondent from violating Financial Code
3 sections 23007; 23023; 23027, subdivision (b); 23035, subdivisions (c) and (e).

4 Dated: August 13, 2007
5 San Francisco, California

6 Respectfully submitted,

7 PRESTON DuFAUCHARD
8 California Corporations Commissioner

9 By _____
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11 Joan E. Kerst
12 Senior Corporations Counsel
13 Attorney for Complainant
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